

Letter of Appeal  
The Universal Service Administrative Company  
Schools and Libraries Division  
July 2, 2008  
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As an innocent party that had nothing to do with the application or the competitive bidding requirements, ICM has no evidence or documents to prove the propriety or impropriety of that process and for the USAC to ask ICM to produce such documentation is an absurdity. The FCC in a footnote to FCC-06-55 specifically addresses this issue by noting that because of the lapse of time the "USAC should look at the totality of the circumstances, including an explanation as to why evidence may no longer be available" *Id* fn 20.

Finally, with respect to the applicability of the *In re Federal-State* decision to other cases, the FCC stated that: "[t]his revised recovery approach shall apply on a going forward basis to all matters for which the USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency." (Emphasis added) *Id.* at par.10.

Since the USAC in the DPL admits this matter is clearly within the forward application as delineated by the FCC in *In re Federal-State*, applying the mandates of this FCC directive to the case at hand, it is clear that ICM had absolutely nothing to do with the original application or competitive bidding process and, as such, it is merely a service provider that needs to uphold the provider's obligations as delineated above by the FCC. It was New Visions Academy who was the Applicant and who obtained these grants and, therefore, was the entity that needed to comply with all the rules and regulations concerning the application and the competitive bid process and, as such, it is that school to whom the Schools and Library Division must look to to recover any funding, if any, that may have been granted in violation of any statute, regulation or rule. Based upon the *In re Federal-State* decision, there is no room for doubt that the FCC has directed that the USAC must proceed against culpable applicant, New Visions Academy (and any other culpable third parties, if any) and not the innocent service provider, ICM.

**2. All Revised Funding Commitment Letters, Funding Commitment Adjustment Reports and Demand Payment Letters issued by USAC with respect to the above referenced Form 471 Application Number and the NVFRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements of that Order.**

As set forth in the Fact section above, the FCC on May 2, 2006 adopted in Proceeding FCC-06-05, (released May 19, 2006) an Order under CC Docket No. 02-6, granting the appeal of ICM (with respect to a number of applications including Application 309196 relating to NVFRNs); finding that the "USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicant's bidding process." (Page 3 ¶6 of the Order). It further ordered the USAC to "Complete its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from the release of this Order." (Page 4 ¶7 of the Order). Application 309196, which relates to the NVFRNs, was listed in the Appendix. (See page 7). More than 120 days have expired since the FCC issued its Order. The USAC has neither obtained an extension of the deadline in the Order, nor has it issued an award or denial of Application 309196. At this late date the USAC is barred by the terms of the FCC order and

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estopple from raising any alleged "improper" procurement issues concerning Application 309196 or the NVFRNs.

### CONCLUSION

For the reasons set forth above, the USAC should grant this appeal and make a determination that:

1. In the event there was any improper actions with respect to the NVFRNs, such actions were those of New Visions Academy and other third parties and it is those parties to which USAC should direct its recovery efforts and not against ICM which was and is an innocent service provider; and
2. All Revised Funding Commitment Letters, Funding Commitment Adjustment Reports and Demand Payment Letters issued by USAC with respect to the above referenced Form 471 Application Number and the NVFRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid.

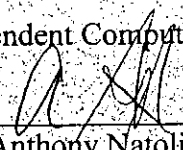
If you have any further questions concerning this matter, please contact the undersigned or our Counsel, Gary Marcus of the law firm, Gary Marcus, Attorney at Law, P.C. 600 Old Country Road, Garden City, NY 11530. (516) 301-7776.

Thank you for giving this your immediate attention.

Very truly yours,

Independent Computer Maintenance, LLC

By

  
Anthony Natoli, President

# Enclosure G



Federal Communications Commission  
Washington, D.C. 20554

## Memo

**To:** Anthony Natoli, President  
Independent Computer Maintenance, LLC

**From:** Gina Spade, Assistant Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

**Date:** November 12, 2008

**Re:** DA 08-2363, Released October 30, 2008

Please find accompanying this memo the Commission's decision on your Request for Review. The accompanying decision may be referenced in the future by its Proceeding Number and release date: DA 08-2363, October 30, 2008.

If the Commission has granted your Request for Review, please contact the Universal Service Administrative Company (USAC) at 888-203-8100 for more information regarding your application. In addition, once USAC has reviewed your application at issue in the attached Order, you will receive a Revised Funding Commitment Decision Letter (RFCDL).

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review of Decisions of the Universal	)	
Service Administrator by	)	
	)	
Excellence Charter School of Bedford-Stuyvesant	)	File Nos. SLD-528588, <i>et al.</i>
Brooklyn, New York, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service Support	)	CC Docket No. 02-6
Mechanism	)	
	)	

ORDER

Adopted: October 30, 2008

Released: October 30, 2008

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant 21 appeals of decisions by the Universal Service Administrative Company (USAC) reducing or denying funding from the schools and libraries universal service support mechanism, also known as the E-rate program, for Funding Years 2002 and 2004-2008 on the grounds that applications failed to respond to USAC's requests for information within the USAC-specified time frame.<sup>1</sup> In granting these appeals, we follow the policy the Commission announced in the *Alpaugh Order*.<sup>2</sup> As explained below, in each case we find good cause to grant the appeals and remand the underlying applications associated with these appeals to USAC for further action consistent with this order. To ensure that USAC resolves the underlying applications expeditiously, we direct it to complete its review of each application listed in the Appendix and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release date of this order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> USAC examines applications in accordance with E-rate program rules, and such scrutiny may result in requests by USAC for additional information from applicants. If the applicant fails to provide the additional information requested, USAC may deny the application. Historically,

<sup>1</sup> The list of petitioners is in the Appendix. In this order, we use the term "appeals" to generically refer to requests for review of decisions issued by USAC. Section 54.719(c) of our rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> See *Request for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.*, File Nos. SLD-523576, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Order*).

<sup>3</sup> 47 C.F.R. §§ 54.501-54.503.

USAC required applicants to respond to its requests for additional or clarifying information or documentation within seven days of the applicant being contacted, unless the deadline was explicitly extended by USAC.<sup>4</sup> After the seven days and any extension period had passed, USAC made its funding determination based on the information it had in its possession.<sup>5</sup>

3. In the *Alpaugh Order*, the Commission granted 78 appeals of applicants denied funding because they failed to respond to USAC's requests for information within the USAC-specified time frame.<sup>6</sup> The Commission remanded the underlying applications to USAC for review and further processing.<sup>7</sup> The order also instructed USAC, beginning with applications for Funding Year 2007, to detail in writing and with specificity to the applicant the information or documentation USAC is seeking and to give applicants a 15-day deadline for responses to such requests.<sup>8</sup> USAC was instructed to continue to work with applicants beyond the 15 days when the applicants were attempting in good faith to submit the necessary documentation.<sup>9</sup>

### III. DISCUSSION

4. We grant these 21 appeals of decisions reducing or denying requests for funding from the E-rate program and remand the underlying applications associated with these appeals to USAC for further action consistent with this order. The petitioners' requests for funding were denied or reduced because the applicants failed to respond to USAC's requests for information within the specified time frame. The petitioners generally argue that they did not receive USAC's request for additional information,<sup>10</sup> they submitted the information USAC requested in a timely manner,<sup>11</sup> USAC never answered requests about

<sup>4</sup> See, e.g., *Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. USAC-220105, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 4520, 4522, para. 6 (Wireline Comp. Bur. 2003) (USAC found that this procedure was necessary to prevent applicants from unduly delaying the application process); see also USAC Schools and Libraries Division website, <http://www.usac.org/sl/tools/news-archive/1998/041998.asp#problem>, (visited Oct. 28, 2008).

<sup>5</sup> See *Alpaugh Order*, 22 FCC Rcd at 6036, para. 3.

<sup>6</sup> *Id.* at 6036-37, para. 4.

<sup>7</sup> *Id.* at 6037, para. 5.

<sup>8</sup> *Id.* at 6038, para. 6. In the *Alpaugh Order*, the Commission also established a presumption that the applicants had received notice five days after such notice is postmarked by USAC. *Id.* at 6038, n. 14.

<sup>9</sup> *Id.* at 6038, para. 6 n. 14.

<sup>10</sup> See Letter from James McGuinness, on behalf of Newburgh Enlarged City School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 9, 2005); Letter from Al Spinks, on behalf of Gulf Shores Academy, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 23, 2007); Letter from Anthony Natoli, on behalf of New Horizons Academy (a/k/a New Visions Academy), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 10, 2007) (noting that it was the service provider, not the applicant); Letter from Leslie Iapicco, Palisades Park Board of Education, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 15, 2007); Letter from Jane Pitts, To'Hajiilee Community School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 30, 2007); Letter from Provida Masi, Port Carbon Public Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 1, 2008).

<sup>11</sup> See Letter from Richard Larson, on behalf of Excellence Charter School of Bedford-Stuyvesant, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 22, 2007); Letter from Linda Clinkenbeard, Fort Gibson Public Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 23, 2007) (Fort Gibson Request for Review); Letter from Winston

what specific documentation was sought,<sup>12</sup> or they lacked sufficient staff to permit them to submit the information on time.<sup>13</sup>

5. Balancing the facts and the circumstances of these specific cases as described below, we find that good cause exists to grant these appeals and remand them to USAC for further processing. Importantly, as the Commission found in the *Alpaugh Order*, these types of appeals involved a procedural error on the part of the petitioners, not a failure to adhere to a core program requirement or a misuse of funds.<sup>14</sup> As the Commission observed in the *Alpaugh Order*, given that any violations that occurred were procedural, not substantive, the complete rejection of these applications is not warranted.<sup>15</sup> The Commission also recognized that these appeals involve a processing deadline, not a program rule.<sup>16</sup> Although deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Communications Act of 1934, as amended, or serve the public interest.<sup>17</sup>

6. We note that granting these appeals should have a minimal impact on the universal service fund because the monies needed to fund the underlying applications, should they all be fully funded, have already been collected and held in reserve.<sup>18</sup> We therefore find that good cause exists to grant and remand

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Himsworth, Garden City Union Free School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed July 18, 2008); Letter from Brenda Lindsey, Grady Municipal Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 11, 2007) (SLD-534639); Letter from Brenda Lindsey, Grady Municipal Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 11, 2007) (SLD-537939); Letter from Ashley Jordan, on behalf of Hayti School District R 2, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Nov. 26, 2007) (Hayti Request for Review); Letter from Winston Greenwell, New Horizons Regional Educational Centers, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 13, 2007); Letter from Jim Curtis, Portage Lake District Library, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 15, 2006); Letter from Theresa DePietro, Tucson Academy of Leadership and Arts, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 20, 2006); Letter from Damien Doguet, on behalf of Vineland Community Demonstration School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Apr. 6, 2007); Letter from LeeAnn Errotabere, Visalia Unified School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 20, 2006).

<sup>12</sup> See Letter from Loraine Saffer, Southeastern BOCES, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 3, 2006).

<sup>13</sup> See Letter from Thomas Allcock, Raymond-Knowles Union Elementary School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 9, 2007); Letter from Michelle Yazzie, St. Michaels Association for Special Education, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Jan. 2, 2008) (St. Michaels Request for Review); Letter from Walter Fox, Spring Branch Independent School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 9, 2005); Letter from Emily Vaughn-Henry, West Contra Costa Unified School District, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 20, 2007).

<sup>14</sup> See *Alpaugh Order*, 22 FCC Rcd at 6037, para. 5.

<sup>15</sup> *Id.*, citing *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5319, para. 9 (2006) (*Bishop Perry Order*).

<sup>16</sup> *Alpaugh Order*, 22 FCC Rcd at 6037, para. 5; *Bishop Perry Order*, 21 FCC Rcd at 5319, para. 9.

<sup>17</sup> 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

<sup>18</sup> We estimate that the appeals granted in this order involve applications for approximately \$2.5 million in funding for Funding Years 2002-2008. We note that USAC has already reserved sufficient funds to address outstanding

these appeals. For each petitioner, we direct USAC to detail in writing to the applicant the specific information or documentation it seeks from the applicant.<sup>19</sup> USAC should then permit the petitioners to provide the information to USAC within 15 calendar days from the date of receipt of the written notice that additional information is required.<sup>20</sup> To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.<sup>21</sup> In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.<sup>22</sup> We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met.

7. We emphasize the limited nature of this decision. As stated above, we recognize that filing deadlines are necessary for the efficient administration of the E-rate program. Although we grant the subject appeals before us, our action here does not eliminate USAC's deadlines for processing applications.<sup>23</sup> In addition, this decision is not intended to reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. We continue to require E-rate applicants to submit complete and accurate information to USAC in a timely fashion as part of the application review process.

8. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, the Commission reserves the right to conduct audits or investigations to determine compliance with the E-rate program rules or requirements. Because audits and investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, the Commission will require USAC to recover such funds through its normal process. We emphasize that the Commission retains the discretion

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appeals. *See, e.g.,* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (Aug. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the universal service fund as a whole.

<sup>19</sup> *See Alpaugh Order*, 22 FCC Rcd at 6037-38, para. 6.

<sup>20</sup> *Id.* As in the *Alpaugh Order*, there is a presumption that the applicant has received notice five days after the postmark date of such notice.

<sup>21</sup> In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

<sup>22</sup> Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

<sup>23</sup> We note that the Commission has initiated a proceeding to address whether particular deadlines should be modified. *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11321, para. 29 (2005).



to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

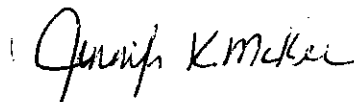
9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Requests for Review listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration consistent with the terms of this order.

10. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that section 47 C.F.R. § 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS WAIVED to the extent provided therein.

11. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that USAC SHALL COMPLETE its review of each remanded application listed in the Appendix and ISSUE an award or a denial of each application based on a complete review and analysis no later than 90 calendar days from release of this order.

12. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION



Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## APPENDIX

Applicant	Application Number	Funding Year	Date Request for Review Filed
Excellence Charter School of Bedford-Stuyvesant Brooklyn, NY	528588	2006	Mar. 22, 2007
Fort Gibson Public Schools Fort Gibson, OK	586371	2007	Nov. 23, 2007
Garden City Union Free School District Garden City, NY	638307	2008	July 18, 2008
Grady Municipal Schools Grady, New Mexico	534639, 537939	2006	Apr. 11, 2007
Independent Computer Maintenance (New Visions Academy a/k/a New Horizons Academy) Newark, New Jersey	309196	2002	Aug. 10, 2007
Joseph Jingoli & Son, Inc. (Vineland Community Demonstration School) Lawrenceville, NJ	522146	2006	Apr. 6, 2007
New Horizons Regional Education Centers Hampton, VA	564836	2007	Aug. 13, 2007
Newburgh Enlarged City School District Newburgh, NY	425779	2004	Jun. 9, 2005
Palisades Park Board of Education Palisades Park, NJ	521924	2006	Mar. 15, 2007
Port Carbon Public Library Port Carbon, PA	559669	2007	May 1, 2008
Portage Lake District Library Houghton, MI	537714, 537818	2006	Nov. 15, 2006
Raynor Services, Inc. (Gulf Shores Academy) Houston, TX	475236	2005	July 23, 2007
Raymond-Knowles Union Elementary School Raymond, CA	536960	2006	Apr. 9, 2007
St. Michaels Assoc. for Special Education St. Michaels, AZ	584147	2007	Jan. 2, 2008
Southern BOCES Lamar, CO	476236	2005	Jan. 3, 2006
Spring Branch Independent School District Houston TX	388996	2004	Jun. 9, 2005
To'Hajiilee Community School To'Hajiilee, NM	484722	2005	Apr. 30, 2007
TriStar Group (Hayti School Dist. R 2) Hayti, MO	579480	2007	Nov. 26, 2007

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review Filed</b>
Tucson Academy of Leadership and Arts Tucson, AZ	484783	2005	Jun. 20, 2006
Visalia Unified School District Visalia, CA	530530	2006	Nov. 20, 2006
West Contra Costa Unified School District Richmond, CA	532568	2006	Mar. 20, 2007